

§ 886.113 Physical condition standard; physical inspection requirements.

(a) *General.* Housing used in this program must be maintained and inspected in accordance with the requirements in 24 CFR part 5, subpart G.

(b) *Space and security.* In addition to the standards in 24 CFR part 5, subpart G, the dwelling unit must have a living room, a kitchen area, and a bathroom. The dwelling unit must have at least one bedroom or living/sleeping room for each two persons.

(c)-(h) [Reserved]

(i) *Lead based paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, H, and R of this title apply to activities under this program.

(j)-(m) [Reserved]

(n) *Congregate housing.* In addition to the foregoing standards, the following standards apply to congregate housing:

(1) The unit shall contain a refrigerator of appropriate size.

(2) The central dining facility (and kitchen facility, if any) shall contain suitable space and equipment to store, prepare and serve food in a sanitary manner, and there shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).

[42 FR 5603, Jan. 28, 1977, as amended at 52 FR 1895, Jan. 15, 1987; 52 FR 9828, Mar. 27, 1987; 53 FR 20802, June 6, 1988; 57 FR 33852, July 30, 1992; 63 FR 46579, Sept. 1, 1998; 64 FR 50227, Sept. 15, 1999]

EFFECTIVE DATE NOTE: At 64 FR 50227, Sept. 15, 1999, § 886.113 was amended by revising paragraph (i), effective Sept. 15, 2000. For the convenience of the user, the superseded text is set forth as follows:

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(i) *Lead-based paint—(1) Purpose and applicability.* The purpose of this paragraph is to implement the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to existing housing units for which

application for assistance is made under this subpart. This paragraph is promulgated under the authorization granted in 24 CFR 35.24(b)(4) and supersedes, with respect to all housing to which it applies, the requirements prescribed by subpart C of 24 CFR part 35. The requirements of this paragraph do not apply to 0-bedroom units. The requirements of paragraph (i)(4) of this section are applicable to units for which applications are approved on or after May 1, 1987. The requirements of subpart A of 24 CFR part 35 apply to all units constructed prior to 1978 covered by a Housing Assistance Payments Contract under this subpart. This section does not apply to projects for the elderly or handicapped (except for units housing children under seven years of age).

(2) *Definitions—Applicable surface.* All intact and nonintact interior and exterior painted surfaces of a residential structure.

Chewable surface. All chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age, e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork.

Defective paint surface. Paint on applicable surfaces that is cracking, scaling, chipping, peeling or loose.

Elevated blood lead level or EBL. Excessive absorption of lead, that is, a confirmed concentration of lead in whole blood of 25 ug/dl (micrograms of lead per deciliter of whole blood) or greater.

Lead-based paint. A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm².

(3) *Defective paint.* Residential units which were constructed prior to 1978 shall be inspected for defective paint surfaces. If defective paint surfaces are found, treatment as required by 24 CFR 35.24(b)(2)(ii) shall be required as a condition of satisfaction of the requirements of § 886.107(c).

(4)(i) *Chewable surfaces.* In the case of a residential structure constructed prior to 1978, a random sample of dwelling units shall be tested for lead-based paint on chewable surfaces. Ten units shall be tested in projects with twenty or more units, and six units shall be tested in projects with fewer than twenty units, together with a sample of common areas and exterior applicable surfaces. Common areas included in the sample should include non-dwelling facilities commonly used by children under seven years of age, such as day care centers. All chewable surfaces in selected units shall be tested. If none of the tested units, common areas or exterior applicable surfaces contain lead-based paint, the project may be considered free of lead-based paint, and no further testing or abatement action will be required. If lead-based paint is found in any units in the sample, all assisted units in the project are required to

§ 886.114

be tested. If lead-based paint is found in any common areas, all common areas in the project are required to be tested. If lead-based paint is found in any exterior applicable surface, all exterior applicable surfaces in the projects are required to be tested. Testing shall be performed using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm² or higher using an XRF shall be considered positive for presence of lead-based paint. Testing of chewable surfaces shall be performed by a State or local health or housing agency, an inspector certified or regulated by the State or local health or housing agency, or an organization recognized by HUD. The testing entity shall certify to the results of the test. The Owner shall be responsible for obtaining these testing services. Where lead-based paint on chewable surfaces is identified, the entire interior or exterior chewable surface shall be treated. Covering or removal of the paint surface in accordance with 24 CFR 35.24 (b)(2)(ii) shall be required as a condition of satisfaction of the requirements of § 886.107(c).

(ii) *EBL Child*. In the case of a residential structure constructed prior to 1978, if the owner is presented with test results that indicate a child seven years of age or younger living in a unit has an elevated blood lead level or EBL, the owner must test the unit occupied by the child and if such test is positive for lead-based paint, abate the unit surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii) or choose not to test and abate all the unit surfaces.

(iii) *Abatement without testing*. In lieu of the procedures set forth in paragraphs (i)(3) and (4) of this section, in the case of a residential structure constructed prior to 1978, the owner may forego testing and abatement, and abate all applicable surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(iii).

(5) *Tenant protection*. The Owner shall take appropriate action to protect tenants from hazards associated with abatement procedures.

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§ 886.114 Equal opportunity requirements.

Participation in the program authorized in this subpart requires compliance with (a) Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Orders 11063 and 11246, and section 3 of the Housing and Urban Development Act of 1968; and (b) all rules, regulations, and requirements issued pursuant thereto.

24 CFR Ch. VIII (4–1–00 Edition)

§ 886.115 [Reserved]

§ 886.116 Security and utility deposits.

(a) An Owner may require Families to pay a security deposit in an amount up to, but not more than, one month's Gross Family Contribution. If a Family vacates its unit, the Owner, subject to State and local laws, may utilize the deposit as reimbursement for any unpaid rent or other amount owed under the Lease. If the Family has provided a security deposit and it is insufficient for such reimbursement, the Owner may claim reimbursement from HUD, not to exceed an amount equal to the remainder of one month's Contract Rent. Any reimbursement under this section shall be applied first toward any unpaid rent. If a Family vacates the unit owing no rent or other amount under the Lease or if such amount is less than the amount of the security deposit, the Owner shall refund the full amount or the unused balance, as the case may be, to the Family.

(b) In those jurisdictions where interest is payable by the Owner on security deposits, the refunded amount shall include the amount of interest payable. All security deposit funds shall be deposited by the Owner in a segregated bank account, and the balance of this account, at all times, shall be equal to the total amount collected from tenants then in occupancy, plus any accrued interest. The Owner shall comply with all State and local laws regarding interest payments on security deposits.

(c) Families shall be expected to obtain the funds to pay security and utility deposits, if required, from their own resources and/or other private or public sources.

§ 886.117 [Reserved]

§ 886.118 Amount of housing assistance payments in projects receiving other HUD assistance.

(a) For any Section 221(d)(3) BMIR, Section 236, or Section 202 project, the Housing Assistance Payment shall be the amount by which the rent payable by the eligible Family under Section 8 is less than the subsidized rent (which subsidy shall not be reduced by reason of any Section 8 assistance).